

109TH CONGRESS
1ST SESSION

H. R. 838

To ensure that the reserve components are able to maintain adequate retention and recruitment levels by protecting the financial security of the families of activated members of the National Guard and of the Reserve.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2005

Mr. LANTOS (for himself, Mr. GRAVES, Mr. MCGOVERN, Mr. SHAYS, Mr. OLVER, Ms. WATSON, Mr. GEORGE MILLER of California, Ms. KAPTUR, Mr. RUPPERSBERGER, Mrs. CAPPS, Mr. STRICKLAND, Mr. GRIJALVA, Mr. CUMMINGS, Mr. GENE GREEN of Texas, Ms. DELAURO, Mrs. MCCARTHY, Mr. BLUMENAUER, Mr. OWENS, Mr. McDERMOTT, Mr. BROWN of Ohio, Mr. JEFFERSON, Mr. MOORE of Kansas, Mr. DELAHUNT, Mr. ETHERIDGE, Ms. NORTON, Mr. CHANDLER, Mrs. MALONEY, Mr. FALCOMA, Mr. CLAY, Mr. COSTELLO, Mr. JONES of North Carolina, and Mr. STARK) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure that the reserve components are able to maintain adequate retention and recruitment levels by protecting the financial security of the families of activated members of the National Guard and of the Reserve.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Help Our Patriotic
3 Employers at Helping Our Military Employees Act” or the
4 “HOPE at HOME Act”.

5 **SEC. 2. NONREDUCTION IN PAY WHILE FEDERAL EM-**
6 **EMPLOYEE IS SERVING ON ACTIVE DUTY IN A**
7 **RESERVE COMPONENT OF THE UNIFORMED**
8 **SERVICES.**

9 (a) IN GENERAL.—Subchapter IV of chapter 55 of
10 title 5, United States Code, is amended by adding at the
11 end the following new section:

12 **“§ 5538. Nonreduction in pay while serving on active**
13 **duty in a reserve component**

14 “(a) An employee who is also a member of a reserve
15 component and is absent from a position of employment
16 with the Federal Government under a call or order to
17 serve on active duty for a period of more than 30 days
18 shall be entitled to receive, for each pay period described
19 in subsection (b), an amount equal to the difference (if
20 any) between—

21 “(1) the amount of civilian basic pay that would
22 otherwise have been payable to the employee for
23 such pay period if the employee’s civilian employ-
24 ment with the Government had not been interrupted
25 by the service on active duty; and

1 “(2) the amount of military compensation that
2 is payable to the employee for the service on active
3 duty and is allocable to such pay period.

4 “(b)(1) Amounts under this section shall be payable
5 with respect to each pay period (which would otherwise
6 apply if the employee’s civilian employment had not been
7 interrupted) that occurs—

8 “(A) while the employee serves on active duty
9 for a period of more than 30 days;

10 “(B) while the employee is hospitalized for, or
11 convalescing from, an illness or injury incurred in,
12 or aggravated during, the performance of such active
13 duty; or

14 “(C) during the 14-day period beginning at the
15 end of such active duty or the end of the period re-
16 ferred to in subparagraph (B).

17 “(2) Paragraph (1) shall not apply with respect to
18 a pay period for which the employee receives civilian basic
19 pay (including by taking any annual, military, or other
20 paid leave) to which the employee is entitled by virtue of
21 the employee’s civilian employment with the Government.

22 “(c) Any amount payable under this section to an em-
23 ployee shall be paid—

24 “(1) by the employing agency of the employee;

1 “(2) from the appropriations or fund that
2 would be used to pay the employee if the employee
3 were in a pay status; and

4 “(3) to the extent practicable, at the same time
5 and in the same manner as would civilian basic pay
6 if the employee’s civilian employment had not been
7 interrupted.

8 “(d) In consultation with Secretary of Defense, the
9 Office of Personnel Management shall prescribe such reg-
10 ulations as may be necessary to carry out this section.

11 “(e) In consultation with the Office of Personnel
12 Management, the head of each employing agency shall pre-
13 scribe procedures to ensure that the rights under this sec-
14 tion apply to the employees of such agency.

15 “(f) In this section:

16 “(1) The terms ‘active duty for a period of
17 more than 30 days’, ‘member’, and ‘reserve compo-
18 nent’ have the meanings given such terms in section
19 101 of title 37.

20 “(2) The term ‘civilian basic pay’, with respect
21 to an employee, includes any amount payable under
22 section 5304 of this title or under such other law
23 providing for the compensation of the employee by
24 the employing agency for work performed.

1 “(3) The term ‘employing agency’, as used with
2 respect to an employee entitled to any payments
3 under this section, means the agency with respect to
4 which the employee has reemployment rights under
5 chapter 43 of title 38. The term ‘agency’ has the
6 meaning given such term in subparagraph (C) of
7 section 2302(a)(2) of this title, except that the term
8 includes Government corporations and agencies ex-
9 cluded by clause (i) or (ii) of such subparagraph.

10 “(4) The term ‘military compensation’ has the
11 meaning given the term ‘pay’ in section 101(21) of
12 title 37, except that the term includes allowances
13 under chapter 7 of such title.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 55 of title 5, United States
16 Code, is amended by inserting after the item relating to
17 section 5537 the following new item:

“5538. Nonreduction in pay while serving on active duty in a reserve compo-
nent.”.

18 (c) APPLICATION OF AMENDMENT.—Section 5538 of
19 title 5, United States Code, as added by subsection (a),
20 shall apply with respect to pay periods (as described in
21 subsection (b) of such section) beginning on or after the
22 date of the enactment of this Act.

1 **SEC. 3. ACTIVE-DUTY RESERVE COMPONENT EMPLOYEE**
2 **CREDIT ADDED TO GENERAL BUSINESS**
3 **CREDIT.**

4 (a) ADDITION OF CREDIT.—Subpart D of part IV of
5 subchapter A of chapter 1 of the Internal Revenue Code
6 of 1986 (relating to business-related credits) is amended
7 by adding at the end the following new section:

8 **“SEC. 45J. ACTIVE-DUTY RESERVE COMPONENT EMPLOYEE**
9 **CREDIT.**

10 “(a) GENERAL RULE.—For purposes of section 38,
11 the Ready Reserve-National Guard employee credit deter-
12 mined under this section for any taxable year with respect
13 to each Ready Reserve-National Guard employee of an em-
14 ployer is an amount equal to the lesser of—

15 “(1) 50 percent of the actual compensation
16 amount paid with respect to such Ready Reserve-
17 National Guard employee for such taxable year while
18 the employee is absent from employment for a rea-
19 son described in subsection (b); or

20 “(2) \$30,000.

21 “(b) COVERED PAY PERIODS.—Subsection (a) shall
22 apply with respect to a Ready Reserve-National Guard
23 employee—

24 “(1) while the employee serves on active duty
25 for a period of more than 30 days;

1 “(2) while the employee is hospitalized for, or
2 convalescing from, an illness or injury incurred in,
3 or aggravated during, the performance of such active
4 duty; or

5 “(3) during the 14-day period beginning at the
6 end of such active duty or the end of the period re-
7 ferred to in subparagraph (B).

8 “(c) LIMITATION.—No credit shall be allowed under
9 subsection (a) with respect to a Ready Reserve-National
10 Guard employee on any day on which the employee was
11 not scheduled to work (for a reason other than such serv-
12 ice on active duty) and ordinarily would not have worked.

13 “(d) PORTION OF CREDIT REFUNDABLE.—

14 “(1) IN GENERAL.—In the case of an employer
15 described in paragraph (2), the aggregate credits al-
16 lowed to a taxpayer under subpart C shall be in-
17 creased by the lesser of—

18 “(A) the credit which would be allowed
19 under this section without regard to this sub-
20 section and the limitation under section 38(c),
21 or

22 “(B) the amount by which the aggregate
23 amount of credits allowed by this subpart (de-
24 termined without regard to this subsection)
25 would increase if the limitation imposed by sec-

1 tion 38(c) for any taxable year were increased
2 by the amount of employer payroll taxes im-
3 posed on the taxpayer during the calendar year
4 in which the taxable year begins.

5 The amount of the credit allowed under this sub-
6 section shall not be treated as a credit allowed under
7 this subpart and shall reduce the amount of the
8 credit otherwise allowable under subsection (a) with-
9 out regard to section 38(c).

10 “(2) EMPLOYER DESCRIBED.—An employer is
11 described in this paragraph if the employer is—

12 “(A) an organization exempt from tax
13 under this chapter,

14 “(B) any State or political subdivision
15 thereof, the District of Columbia, any posses-
16 sion of the United States, or any agency or in-
17 strumentality of any of the foregoing, or

18 “(C) any Indian tribal government (within
19 the meaning of section 7871) or any agency or
20 instrumentality thereof.

21 “(3) EMPLOYER PAYROLL TAXES.—For pur-
22 poses of this subsection—

23 “(A) IN GENERAL.—The term ‘employer
24 payroll taxes’ means the taxes imposed by—

25 “(i) section 3111(b), and

1 “(ii) sections 3211(a) and 3221(a)
 2 (determined at a rate equal to the rate
 3 under section 3111(b)).

4 “(B) SPECIAL RULE.—A rule similar to
 5 the rule of section 24(d)(2)(C) shall apply for
 6 purposes of subparagraph (A).

7 “(e) DEFINITIONS.—In this section—

8 “(1) The terms ‘active duty for a period of
 9 more than 30 days’, ‘member’, and ‘reserve compo-
 10 nent’ have the meanings given such terms in section
 11 101 of title 37, United States Code.

12 “(2) The term ‘compensation’ means any remu-
 13 neration for employment, whether in cash or in kind,
 14 which is paid or incurred by a taxpayer and which
 15 is deductible from the taxpayer’s gross income under
 16 section 162(a)(1).

17 “(3) The term ‘Ready Reserve-National Guard
 18 employee’ with respect to an employer, means an
 19 employee of the employer who is also a member of
 20 a reserve component during a taxable year.”.

21 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 22 CREDIT.—Subsection (b) of section 38 of such Code (re-
 23 lating to general business credit) is amended by striking
 24 “plus” at the end of paragraph (18), by striking the period

1 at the end of paragraph (19) and inserting “, plus”, and
 2 by adding at the end the following new paragraph:

3 “(20) the active-duty reserve component em-
 4 ployee credit determined under section 45J(a).”.

5 (c) CONFORMING AMENDMENT.—

6 (1) Paragraph (2) of section 1324(b) of title
 7 31, United States Code, is amended by inserting “or
 8 45J” after “section 35”.

9 (2) The table of sections for subpart D of part
 10 IV of subchapter A of chapter 1 of the Internal Rev-
 11 enue Code of 1986 is amended by inserting after the
 12 item relating to section 45I the following new item:

“Sec. 45J. Active-duty reserve component employee credit.”.

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2004.

16 **SEC. 4. DIFFERENTIAL WAGE PAYMENTS.**

17 (a) INCOME TAX WITHHOLDING.—Section 3401 of
 18 the Internal Revenue Code of 1986 (relating to defini-
 19 tions) is amended by adding at the end the following new
 20 subsection:

21 “(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE
 22 DUTY MEMBERS OF THE UNIFORMED SERVICES.—

23 “(1) IN GENERAL.—For purposes of subsection
 24 (a), any differential wage payment shall be treated

1 as a payment of wages by the employer to the em-
2 ployee.

3 “(2) DIFFERENTIAL WAGE PAYMENT.—For
4 purposes of paragraph (1), the term ‘differential
5 wage payment’ means any payment which—

6 “(A) is made by an employer to an indi-
7 vidual with respect to any period during which
8 the individual is performing service in the uni-
9 formed services while on active duty for a pe-
10 riod of more than 30 days, and

11 “(B) represents all or a portion of the
12 wages the individual would have received from
13 the employer if the individual were performing
14 service for the employer.”.

15 (b) TREATMENT OF DIFFERENTIAL WAGE PAY-
16 MENTS FOR RETIREMENT PLAN PURPOSES.—

17 (1) PENSION PLANS.—

18 (A) IN GENERAL.—Section 414(u) of such
19 Code (relating to special rules relating to vet-
20 erans’ reemployment rights under USERRA) is
21 amended by adding at the end the following
22 new paragraph:

23 “(11) TREATMENT OF DIFFERENTIAL WAGE
24 PAYMENTS.—

1 “(A) IN GENERAL.—Except as provided in
2 this paragraph, for purposes of applying this
3 title to a retirement plan to which this sub-
4 section applies—

5 “(i) an individual receiving a differen-
6 tial wage payment shall be treated as an
7 employee of the employer making the pay-
8 ment,

9 “(ii) the differential wage payment
10 shall be treated as compensation, and

11 “(iii) the plan shall not be treated as
12 failing to meet the requirements of any
13 provision described in paragraph (1)(C) by
14 reason of any contribution which is based
15 on the differential wage payment.

16 “(B) SPECIAL RULE FOR DISTRIBUTIONS.—
17

18 “(i) IN GENERAL.—Notwithstanding
19 subparagraph (A)(i), for purposes of sec-
20 tion 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii),
21 403(b)(11)(A), or 457(d)(1)(A)(ii), an in-
22 dividual shall be treated as having been
23 severed from employment during any pe-
24 riod the individual is performing service in

1 the uniformed services described in section
2 3401(i)(2)(A).

3 “(ii) LIMITATION.—If an individual
4 elects to receive a distribution by reason of
5 clause (i), the plan shall provide that the
6 individual may not make an elective defer-
7 ral or employee contribution during the 6-
8 month period beginning on the date of the
9 distribution.

10 “(C) NONDISCRIMINATION REQUIRE-
11 MENT.—Subparagraph (A)(iii) shall apply only
12 if all employees of an employer performing serv-
13 ice in the uniformed services described in sec-
14 tion 3401(i)(2)(A) are entitled to receive dif-
15 ferential wage payments on reasonably equiva-
16 lent terms and, if eligible to participate in a re-
17 tirement plan maintained by the employer, to
18 make contributions based on the payments .
19 For purposes of applying this subparagraph,
20 the provisions of paragraphs (3), (4), and (5),
21 of section 410(b) shall apply.

22 “(D) DIFFERENTIAL WAGE PAYMENT.—
23 For purposes of this paragraph, the term ‘dif-
24 ferential wage payment’ has the meaning given
25 such term by section 3401(i)(2).”.

1 (B) CONFORMING AMENDMENT.—The
2 heading for section 414(u) of such Code is
3 amended by inserting “AND TO DIFFERENTIAL
4 WAGE PAYMENTS TO MEMBERS ON ACTIVE
5 DUTY” after “USERRA”.

6 (2) DIFFERENTIAL WAGE PAYMENTS TREATED
7 AS COMPENSATION FOR INDIVIDUAL RETIREMENT
8 PLANS.—Section 219(f)(1) of such Code (defining
9 compensation) is amended by adding at the end the
10 following new sentence: “The term ‘compensation’
11 includes any differential wage payment (as defined
12 in section 3401(i)(2))”.

13 (c) EFFECTIVE DATES.—

14 (1) SUBSECTION (a).—The amendments made
15 by subsection (a) shall apply to remuneration paid
16 after December 31, 2004.

17 (2) SUBSECTION (b).—The amendments made
18 by subsection (b) shall apply to plan years beginning
19 after December 31, 2004.

20 (d) PROVISIONS RELATING TO PLAN AMEND-
21 MENTS.—

22 (1) IN GENERAL.—If this subsection applies to
23 any plan or annuity contract amendment—

24 (A) such plan or contract shall be treated
25 as being operated in accordance with the terms

1 of the plan or contract during the period de-
2 scribed in paragraph (2)(B)(i), and

3 (B) except as provided by the Secretary of
4 the Treasury, such plan shall not fail to meet
5 the requirements of the Internal Revenue Code
6 of 1986 or the Employee Retirement Income
7 Security Act of 1974 by reason of such amend-
8 ment.

9 (2) AMENDMENTS TO WHICH SECTION AP-
10 PLIES.—

11 (A) IN GENERAL.—This subsection shall
12 apply to any amendment to any plan or annuity
13 contract which is made—

14 (i) pursuant to any amendment made
15 by this section, and

16 (ii) on or before the last day of the
17 first plan year beginning on or after Janu-
18 ary 1, 2007.

19 (B) CONDITIONS.—This subsection shall
20 not apply to any plan or annuity contract
21 amendment unless—

22 (i) during the period beginning on the
23 date the amendment described in subpara-
24 graph (A)(i) takes effect and ending on the
25 date described in subparagraph (A)(ii) (or,

1 if earlier, the date the plan or contract
 2 amendment is adopted), the plan or con-
 3 tract is operated as if such plan or con-
 4 tract amendment were in effect; and
 5 (ii) such plan or contract amendment
 6 applies retroactively for such period.

7 **SEC. 5. CREDIT FOR INCOME DIFFERENTIAL FOR EMPLOY-**
 8 **MENT OF ACTIVATED MILITARY RESERVIST**
 9 **AND REPLACEMENT PERSONNEL.**

10 (a) IN GENERAL.—Subpart B of part IV of sub-
 11 chapter A of chapter 1 of the Internal Revenue Code of
 12 1986 (relating to foreign tax credit, etc.) is amended by
 13 adding at the end the following new section:

14 **“SEC. 30B. EMPLOYER WAGE CREDIT FOR ACTIVATED MILI-**
 15 **TARY RESERVISTS.**

16 “(a) GENERAL RULE.—There shall be allowed as a
 17 credit against the tax imposed by this chapter for the tax-
 18 able year an amount equal to the sum of—

19 “(1) in the case of a small business employer,
 20 the employment credit with respect to all qualified
 21 employees and qualified replacement employees of
 22 the taxpayer, plus

23 “(2) the self-employment credit of a qualified
 24 self-employed taxpayer.

1 “(b) EMPLOYMENT CREDIT.—For purposes of this
2 section—

3 “(1) QUALIFIED EMPLOYEES.—

4 “(A) IN GENERAL.—The employment cred-
5 it with respect to a qualified employee of the
6 taxpayer for any taxable year is equal to 50
7 percent of the lesser of—

8 “(i) the excess, if any, of—

9 “(I) the qualified employee’s av-
10 erage daily qualified compensation for
11 the taxable year, over

12 “(II) the average daily military
13 pay and allowances received by the
14 qualified employee during the taxable
15 year, while participating in qualified
16 reserve component duty to the exclu-
17 sion of the qualified employee’s nor-
18 mal employment duties for the num-
19 ber of days the qualified employee
20 participates in qualified reserve com-
21 ponent duty during the taxable year,
22 including time spent in a travel sta-
23 tus, or

24 “(ii) \$30,000.

1 The employment credit, with respect to all
2 qualified employees, is equal to the sum of the
3 employment credits for each qualified employee
4 under this subsection.

5 “(B) AVERAGE DAILY QUALIFIED COM-
6 PENSATION AND AVERAGE DAILY MILITARY PAY
7 AND ALLOWANCES.—As used with respect to a
8 qualified employee—

9 “(i) the term ‘average daily qualified
10 compensation’ means the qualified com-
11 pensation of the qualified employee for the
12 taxable year divided by the difference be-
13 tween—

14 “(I) 365, and

15 “(II) the number of days the
16 qualified employee participates in
17 qualified reserve component duty dur-
18 ing the taxable year, including time
19 spent in a travel status, and

20 “(ii) the term ‘average daily military
21 pay and allowances’ means—

22 “(I) the amount paid to the
23 qualified employee during the taxable
24 year as military pay and allowances
25 on account of the qualified employee’s

1 participation in qualified reserve com-
2 ponent duty, divided by

3 “(II) the total number of days
4 the qualified employee participates in
5 qualified reserve component duty, in-
6 cluding time spent in travel status.

7 “(C) QUALIFIED COMPENSATION.—When
8 used with respect to the compensation paid or
9 that would have been paid to a qualified em-
10 ployee for any period during which the qualified
11 employee participates in qualified reserve com-
12 ponent duty, the term ‘qualified compensation’
13 means—

14 “(i) compensation which is normally
15 contingent on the qualified employee’s
16 presence for work and which would be de-
17 ductible from the taxpayer’s gross income
18 under section 162(a)(1) if the qualified
19 employee were present and receiving such
20 compensation,

21 “(ii) compensation which is not char-
22 acterized by the taxpayer as vacation or
23 holiday pay, or as sick leave or pay, or as
24 any other form of pay for a nonspecific
25 leave of absence, and with respect to which

1 the number of days the qualified employee
2 participates in qualified reserve component
3 duty does not result in any reduction in
4 the amount of vacation time, sick leave, or
5 other nonspecific leave previously credited
6 to or earned by the qualified employee, and

7 “(iii) group health plan costs (if any)
8 with respect to the qualified employee.

9 “(D) QUALIFIED EMPLOYEE.—The term
10 ‘qualified employee’ means a person who—

11 “(i) has been an employee of the tax-
12 payer for the 31-day period immediately
13 preceding the period during which the em-
14 ployee participates in qualified reserve
15 component duty, and

16 “(ii) is a member of the Ready Re-
17 serve of a reserve component of an Armed
18 Force of the United States as defined in
19 sections 10142 and 10101 of title 10,
20 United States Code.

21 “(2) QUALIFIED REPLACEMENT EMPLOYEES.—

22 “(A) IN GENERAL.—The employment cred-
23 it with respect to a qualified replacement em-
24 ployee of the taxpayer for any taxable year is
25 equal to 50 percent of the lesser of—

1 “(i) the individual’s qualified com-
2 pensation attributable to service rendered
3 as a qualified replacement employee, or

4 “(ii) \$12,000.

5 The employment credit, with respect to all
6 qualified replacement employees, is equal to the
7 sum of the employment credits for each quali-
8 fied replacement employee under this sub-
9 section.

10 “(B) QUALIFIED COMPENSATION.—When
11 used with respect to the compensation paid to
12 a qualified replacement employee, the term
13 ‘qualified compensation’ means—

14 “(i) compensation which is normally
15 contingent on the qualified replacement
16 employee’s presence for work and which is
17 deductible from the taxpayer’s gross in-
18 come under section 162(a)(1),

19 “(ii) compensation which is not char-
20 acterized by the taxpayer as vacation or
21 holiday pay, or as sick leave or pay, or as
22 any other form of pay for a nonspecific
23 leave of absence, and

1 “(iii) group health plan costs (if any)
2 with respect to the qualified replacement
3 employee.

4 “(C) QUALIFIED REPLACEMENT EM-
5 PLOYEE.—The term ‘qualified replacement em-
6 ployee’ means an individual who is hired to re-
7 place a qualified employee or a qualified self-
8 employed taxpayer, but only with respect to the
9 period during which such employee or taxpayer
10 participates in qualified reserve component
11 duty, including time spent in travel status.

12 “(D) FAILURE TO MAKE DIFFERENTIAL
13 WAGE PAYMENTS.—The employment credit with
14 respect to a qualified replacement employee of
15 the taxpayer for any taxable year shall be zero
16 if the taxpayer does not make all differential
17 wage payments (as defined by section
18 3401(i)(2)) for the taxable year to the qualified
19 employee or the qualified self-employed tax-
20 payer (as the case may be) who is replaced by
21 the qualified replacement employee.

22 “(c) SELF-EMPLOYMENT CREDIT.—For purposes of
23 this section—

1 “(1) IN GENERAL.—The self-employment credit
2 of a qualified self-employed taxpayer for any taxable
3 year is equal to 50 percent of the lesser of—

4 “(A) the excess, if any, of—

5 “(i) the self-employed taxpayer’s aver-
6 age daily self-employment income for the
7 taxable year over

8 “(ii) the average daily military pay
9 and allowances received by the taxpayer
10 during the taxable year, while participating
11 in qualified reserve component duty to the
12 exclusion of the taxpayer’s normal self-em-
13 ployment duties for the number of days the
14 taxpayer participates in qualified reserve
15 component duty during the taxable year,
16 including time spent in a travel status, or

17 “(B) \$30,000.

18 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
19 COME AND AVERAGE DAILY MILITARY PAY AND AL-
20 LOWANCES.—As used with respect to a self-em-
21 ployed taxpayer—

22 “(A) the term ‘average daily self-employ-
23 ment income’ means the self-employment in-
24 come (as defined in section 1402(b)) of the tax-
25 payer for the taxable year plus the amount paid

1 for insurance which constitutes medical care for
2 the taxpayer for such year (within the meaning
3 of section 162(l)) divided by the difference be-
4 tween—

5 “(i) 365, and

6 “(ii) the number of days the taxpayer
7 participates in qualified reserve component
8 duty during the taxable year, including
9 time spent in a travel status, and

10 “(B) the term ‘average daily military pay
11 and allowances’ means—

12 “(i) the amount paid to the taxpayer
13 during the taxable year as military pay
14 and allowances on account of the tax-
15 payer’s participation in qualified reserve
16 component duty, divided by

17 “(ii) the total number of days the tax-
18 payer participates in qualified reserve com-
19 ponent duty, including time spent in travel
20 status.

21 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—

22 The term ‘qualified self-employed taxpayer’ means a
23 taxpayer who—

1 “(A) has net earnings from self-employ-
2 ment (as defined in section 1402(a)) for the
3 taxable year, and

4 “(B) is a member of the Ready Reserve of
5 a reserve component of an Armed Force of the
6 United States.

7 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
8 employment credit or the self-employment credit provided
9 in this section is in addition to any deduction otherwise
10 allowable with respect to compensation actually paid to a
11 qualified employee, qualified replacement employee, or
12 qualified self-employed taxpayer during any period the
13 qualified employee or qualified self-employed taxpayer par-
14 ticipates in qualified reserve component duty to the exclu-
15 sion of normal employment duties.

16 “(e) COORDINATION WITH OTHER CREDITS.—The
17 amount of credit otherwise allowable under sections 51(a)
18 and 1396(a) with respect to any employee shall be reduced
19 by the credit allowed by this section with respect to such
20 employee.

21 “(f) LIMITATIONS.—

22 “(1) APPLICATION WITH OTHER CREDITS.—
23 The credit allowed under subsection (a) for any tax-
24 able year shall not exceed the excess (if any) of—

1 “(A) the regular tax for the taxable year
2 reduced by the sum of the credits allowable
3 under subpart A and sections 27, 29, and 30,
4 over

5 “(B) the tentative minimum tax for the
6 taxable year.

7 “(2) DISALLOWANCE FOR FAILURE TO COMPLY
8 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
9 MEMBERS OF THE RESERVE COMPONENTS OF THE
10 ARMED FORCES OF THE UNITED STATES.—No credit
11 shall be allowed under subsection (a) to a taxpayer
12 for—

13 “(A) any taxable year, beginning after the
14 date of the enactment of this section, in which
15 the taxpayer is under a final order, judgment,
16 or other process issued or required by a district
17 court of the United States under section 4323
18 of title 38 of the United States Code with re-
19 spect to a violation of chapter 43 of such title,
20 and

21 “(B) the 2 succeeding taxable years.

22 “(3) DISALLOWANCE WITH RESPECT TO PER-
23 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
24 No credit shall be allowed under subsection (a) to a
25 taxpayer with respect to any period by taking into

1 account any person who is called or ordered to active
2 duty for any of the following types of duty:

3 “(A) Active duty for training under any
4 provision of title 10, United States Code.

5 “(B) Training at encampments, maneu-
6 vers, outdoor target practice, or other exercises
7 under chapter 5 of title 32, United States Code.

8 “(C) Full-time National Guard duty, as
9 defined in section 101(d)(5) of title 10, United
10 States Code.

11 “(g) GENERAL DEFINITIONS AND SPECIAL RULES.—
12 For purposes of this section—

13 “(1) SMALL BUSINESS EMPLOYER.—

14 “(A) IN GENERAL.—The term ‘small busi-
15 ness employer’ means, with respect to any tax-
16 able year, any employer who employed an aver-
17 age of 50 or fewer employees on business days
18 during such taxable year.

19 “(B) CONTROLLED GROUPS.—For pur-
20 poses of subparagraph (A), all persons treated
21 as a single employer under subsection (b), (c),
22 (m), or (o) of section 414 shall be treated as a
23 single employer.

24 “(2) MILITARY PAY AND ALLOWANCES.—The
25 term ‘military pay’ means pay as that term is de-

1 fined in section 101(21) of title 37, United States
 2 Code, and the term ‘allowances’ means the allow-
 3 ances payable to a member of the Armed Forces of
 4 the United States under chapter 7 of that title.

5 “(3) QUALIFIED RESERVE COMPONENT
 6 DUTY.—The term ‘qualified reserve component duty’
 7 includes only active duty performed, as designated in
 8 the reservist’s military orders, in support of a con-
 9 tingency operation as defined in section 101(a)(13)
 10 of title 10, United States Code.

11 “(4) SPECIAL RULE FOR CERTAIN MANUFAC-
 12 TURERS.—

13 “(A) IN GENERAL.—In the case of any
 14 qualified manufacturer, paragraph (1)(A) of
 15 this subsection shall be applied by substituting
 16 ‘100’ for ‘50’.

17 “(B) QUALIFIED MANUFACTURER.—For
 18 purposes of this paragraph, the term ‘qualified
 19 manufacturer’ means any person if—

20 “(i) the primary business of such per-
 21 son is classified in sector 31, 32, or 33 of
 22 the North American Industrial Classifica-
 23 tion System, and

1 “(ii) all of such person’s facilities
 2 which are used for production in such busi-
 3 ness are located in the United States.

4 “(5) CARRYBACK AND CARRYFORWARD AL-
 5 LOWED.—

6 “(A) IN GENERAL.—If the credit allowable
 7 under subsection (a) for a taxable year exceeds
 8 the amount of the limitation under subsection
 9 (f)(1) for such taxable year (in this paragraph
 10 referred to as the ‘unused credit year’), such
 11 excess shall be a credit carryback to each of the
 12 3 taxable years preceding the unused credit
 13 year and a credit carryforward to each of the
 14 20 taxable years following the unused credit
 15 year.

16 “(B) RULES.—Rules similar to the rules of
 17 section 39 shall apply with respect to the credit
 18 carryback and credit carryforward under sub-
 19 paragraph (A).

20 “(6) CERTAIN RULES TO APPLY.—Rules similar
 21 to the rules of subsections (c), (d), and (e) of section
 22 52 shall apply.”.

23 (b) CONFORMING AMENDMENT.—Section 55(c)(2) of
 24 the Internal Revenue Code of 1986 is amended by insert-
 25 ing “30B(f)(1),” after “30(b)(3),”.

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for subpart B of part IV of subchapter A of chapter 1
 3 of the Internal Revenue Code of 1986 is amended by add-
 4 ing at the end of 30A the following new item:

“Sec. 30B. Employer wage credit for activated military reservists.”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2004.

8 **SEC. 6. EMPLOYER CONTRIBUTIONS TO IRAS OF CERTAIN**
 9 **MEMBERS OF THE UNIFORMED SERVICES.**

10 (a) IN GENERAL.—Section 3121 of the Internal Rev-
 11 enue Code of 1986 is amended by adding at the end the
 12 following:

13 “(z) EMPLOYER CONTRIBUTIONS TO IRAS OF CER-
 14 TAIN MEMBERS OF THE UNIFORMED SERVICES.—Noth-
 15 ing in any paragraph of subsection (a) (other than para-
 16 graphs (1) and (5)) shall exclude from the term ‘wages’
 17 any employer payment on behalf of an individual to an
 18 individual retirement plan if such payment is made by the
 19 employer to such plan with respect to any period during
 20 which the individual is performing service in the uni-
 21 formed services while on active duty for a period of more
 22 than 30 days.”.

23 (b) RAILROAD RETIREMENT.—Subsection (e) of Sec-
 24 tion 3231 of such Code is amended by adding at the end
 25 the following new paragraph:

1 “(1) EMPLOYER CONTRIBUTIONS TO IRAS OF
2 CERTAIN MEMBERS OF THE UNIFORMED SERV-
3 ICES.—Nothing in any paragraph of this subsection
4 (other than paragraph (2)) shall exclude from the
5 term ‘compensation’ any amount described in section
6 3121(z).”.

7 (c) FEDERAL UNEMPLOYMENT TAX.—Section 3306
8 of such Code is amended by adding at the end the fol-
9 lowing:

10 “(u) EMPLOYER CONTRIBUTIONS TO IRAS OF CER-
11 TAIN MEMBERS OF THE UNIFORMED SERVICES.—Noth-
12 ing in any paragraph of subsection (b) (other than para-
13 graphs (1) and (5)) shall exclude from the term ‘wages’
14 any employer payment on behalf of an individual to an
15 individual retirement plan if such payment is made by the
16 employer to such plan with respect to any period during
17 which the individual is performing service in the uni-
18 formed services while on active duty for a period of more
19 than 30 days.”.

20 (d) WITHHOLDING.—Section 3401(a) of such Code
21 is amended by adding at the end the following new sub-
22 section:

23 “(u) EMPLOYER CONTRIBUTIONS TO IRAS OF CER-
24 TAIN MEMBERS OF THE UNIFORMED SERVICES.—Noth-
25 ing in any paragraph of subsection (a) (other than para-

1 graph (12)) shall exclude from the term ‘wages’ any
2 amount described in section 3121(z).”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to amounts paid after December
5 31, 2004.

